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March 13, 1997

William F. Caton  
Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C.

Re: ***Ex Parte Presentation***  
**MM Dockets 87-268 and 91-221**

Dear Mr. Caton:

We represent BET Holdings, Inc. ("BET") in matters before the Federal Communications Commission. Pursuant to Section 1.1206(a)(2) of the Commission's Rules, we hereby notify the Commission of an *ex parte* presentation to Mr. William Kennard, General Counsel, on Thursday, March 13, 1997, concerning matters before the Commission in the digital television proceeding in MM Docket 87-268 and in the local ownership proceeding in MM Docket 91-221.

During our presentation to Mr. Kennard concerning the digital television proceeding in MM Docket 87-268, we highlighted the comments of BET with regard to the Commission's diversity obligations pursuant to Sections 307 and 336 of the Communications Act of 1934. In addition, we presented a position paper highlighting the competition policy issues associated with the digital television proceeding.

The competition policy issues set forth in our position paper included: (1) the promotion of spectrum efficiency and flexibility for digital television broadcast services; (2) the availability of channels specifically for new entrants to acquire digital television licenses; (3) the imposition of spectrum fees on incumbent broadcasters; and (4) the provision of incentives for incumbent broadcasters to partner with new entrants for an auction of licenses.

During our presentation to Mr. Kennard concerning the local ownership proceeding in MM Docket 91-221, we reiterated BET's position that the Commission should not adopt any

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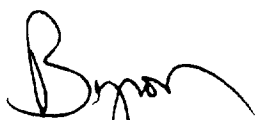
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rules which would hinder competition and diversity. Those rules would include any rules which result in a significant consolidation of broadcast television. We also restated the importance of the Commission's strict enforcement of the local ownership rule it ultimately adopts and the disallowance of any waiver from such adopted rule.

If you have any questions about this matter, please call me at (202) 457-5257.

Sincerely yours,



Byron F. Marchant

cc: William Kennard, General Counsel  
Office of General Counsel

## THE AUCTION OF DTV SPECTRUM CAN FOSTER COMPETITION AND DIVERSITY IN TV BROADCASTING WITHOUT UNDERMINING INCUMBENT TV BROADCASTERS

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The Federal Communications Commission ("FCC") is currently considering allocation plans for digital television ("DTV") channels pursuant to the Telecommunications Act of 1996. Every proposal under consideration by the FCC provides each incumbent, full-service broadcaster with a free DTV channel allocation to replace their current analog TV channel. Despite extensive consolidation in the TV broadcasting industry, incumbent TV broadcasters are demanding that the entire DTV spectrum be turned over to them for free, eliminating any possibility for viable, new DTV television entrants or competition. The FCC need not provide incumbent broadcasters with every channel, 2-69, to meet their broadcasting needs. The FCC can fully accommodate incumbent broadcasters on channels 7-51. The FCC should utilize its regulatory authority to promote competition and diversity in broadcasting through the auction of available DTV spectrum to new entrants immediately.

### *I. The FCC Can Fully Accommodate Incumbent Broadcasters on DTV Channels 7-51, Allowing New, Viable Entrants to Compete in the DTV Market Via Auction.*

- The FCC must account for recent technological improvements in spectrum efficiency that now permit a more useful allocation of TV channels. DTV channels can be assigned to broadcasters in closer proximity to one another since digital technology is more robust than analog channels. Flexible use of DTV channels may permit multiple channel program streams with each license. In fact, DTV stations may only need a portion of a 6 MHz DTV channel to broadcast a single DTV program service. The FCC's use of a channel "packing" plan could satisfy broadcasters' DTV give-away, and provide new, viable entrants with an opportunity to compete for at least 10 new channels in the DTV market.
- Section 307(b) of the 1934 Communications Act requires the FCC to use the spectrum in an efficient, fair and equitable manner. The FCC's Core Spectrum Option, which would allocate channels 7-51 to incumbent broadcasters for free, is consistent with the FCC's efficiency mandate. Any DTV spectrum channels left over after the FCC allocates a free DTV channel to incumbent, full-power TV broadcasters should be allocated to new entrants via auction.
- As a recent FCC analysis indicates, market forces best achieve technological and allocative efficiency for the benefit of consumers. Public interest considerations require additional diversity in ownership and programming in the evolving DTV market. Auctioning remaining DTV spectrum to a diverse group of new entrants will achieve this goal fairly and efficiently. Additional give-aways of spectrum to incumbent broadcasters or other private entities in an effort to preordain the winners of the emerging DTV market would only waste spectrum and undermine spectrum efficiency.

## *II. The FCC's Duty to Ensure Competition and Diversity in TV Broadcasting Can Be Achieved Through the Auction of Available Spectrum.*

- The TV broadcast industry has become increasingly consolidated in recent years turning the broadcast spectrum into the domain of a few, multimedia conglomerates. An unprecedented number of blockbuster media mergers and acquisitions, worth over \$10 billion in 1996 alone, have occurred following changes to FCC national ownership rules, changes to FCC broadcast licensing procedures, and the elimination of financial interest and syndication restrictions. In addition, the FCC has lengthened the broadcast license terms of TV stations from 5 to 8 years while implementing a new two-step broadcast renewal process that eliminates comparative renewal hearings and essentially renews broadcast licenses automatically. Without a clear consideration of the limited opportunities for new entrants in the current TV broadcasting industry, the FCC runs the risk of exacerbating the current concentration of broadcast ownership in the emerging DTV market.
- In light of its duty to ensure diversity of viewpoint in TV broadcasting, the FCC should be cognizant of the fact that minority-owned businesses only hold 3% of all broadcast licenses nationwide despite the increasing number of minority and women consumers in the broadcast viewing audience. Numerous empirical studies have shown the strong correlation between ownership by minority businesses and diversity of programming. The FCC should strongly consider the opportunities that could be created by auctions of DTV channels to achieve the FCC's policies of broadcast diversity.
- Section 307(b) of the Communications Act of 1934 requires the FCC to distribute broadcast licenses in a fair and equitable manner. In addition, for 50 years, a fundamental purpose of the FCC has been the promotion of diversification of ownership to maximize diversification of program and service viewpoints. The FCC must provide genuine opportunities for all segments of society to participate in and benefit from the digital TV broadcast spectrum. An auction of the DTV spectrum made available from an efficient, channel packing plan provides viable minority and women-owned enterprises with a licensing mechanism to compete for an opportunity to join the DTV industry.
- The FCC must adopt rules to ensure that the emerging DTV market will not be controlled by a small group of incumbent broadcasters who support barriers to entry for new, viable entrants in the DTV market, including minority and women-owned enterprises. While auctions would provide new, viable entrants with an opportunity to compete in the emerging DTV market, other actions by the FCC could help bring about the inclusion of all segments of society in TV broadcasting, such as: (1) allowing small business broadcasters to form partnerships and joint ventures for the purpose of pooling resources to speed the delivery of DTV services; (2) providing incentives for incumbent broadcasters to form partnerships with new minority and women-owned entrants; and (3) offering spectrum fee credits to incumbent broadcasters that work to promote the entrance of new, viable minority and women-owned enterprises in the DTV market.